

EXHIBIT 3

RICHARD B. DIX
UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:
THE RHODES COMPANIES, LLC,
aka "Rhodes Homes," et al.,) Case No.:
BK-S-09-14814-LBR
Chapter 11
AFFECTS:
All Debtors

DEPOSITION OF RICHARD B. DIX
LAS VEGAS, NEVADA
THURSDAY, JULY 16, 2009

REPORTED BY: JANET C. TRIMMER, RPR, CRR
NV CCR No. 864, CA CSR No. 4008

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1 RICHARD B. DIX
 2 BY MR. KORNFELD:
 3 Q. So you haven't seen him do anything
 4 fraudulent; correct?
 5 A. I have not physically seen him do anything
 6 fraudulent.
 7 Q. Have you seen any documents that would
 8 indicate to you that he has done anything fraudulent?
 9 MR. QURESHI: Object to form.
 10 THE WITNESS: For example, the document
 11 that's attached here in exhibit A that you referred to
 12 implied that Mr. Rhodes has behaved in a fraudulent
 13 manner in numerous cases.
 14 Again, our firm has not been hired to
 15 determine or uncover those type of activities. So I'm
 16 not in a position to say whether he has or has not
 17 behaved in a fraudulent manner.
 18 BY MR. KORNFELD:
 19 Q. That wasn't my question, sir. My question
 20 is -- try to listen to it and just answer my question.
 21 We'll get done sooner, I promise.
 22 A. All right, sir.
 23 Q. Here's the question again:
 24 Have you seen any documents that would
 25 indicate to you that Mr. Rhodes has done anything
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 2 entities approximately \$1 million, and that was days
 3 before the company elected to file bankruptcy, based
 4 on a report that was completed some time before.
 5 So those type -- that would be an example
 6 that, again, it will have to be interpreted whether
 7 that's fraudulent or whatever action that may be
 8 interpreted as. But that would be one item that would
 9 at least, I think, raise some question of a document
 10 that I have physically seen.
 11 I'm trying to think of any other specific
 12 documents that I have seen. That's what comes to mind
 13 at this point in time, Alan.
 14 BY MR. KORNFELD:
 15 Q. Other than exhibit A to the trustee motion,
 16 which is the Alix report --
 17 A. Uh-huh.
 18 Q. -- and the Main Amundson report that you
 19 referred to, have you seen any documents that would
 20 indicate to you that Mr. Rhodes engaged in fraudulent
 21 activity?
 22 MR. QURESHI: Objection.
 23 THE WITNESS: Specific to documents, I don't
 24 recall any that I have seen.
 25
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 2 fraudulent?
 3 MR. QURESHI: Object to the form.
 4 THE WITNESS: I personally have not seen any
 5 documents, again excluding the exhibit that's attached
 6 herein. I have not had -- been privy to any legal
 7 counsel's interpretation of documents as in the Main
 8 report and others that would interpret one way or
 9 another, but I have personally not reviewed anything
 10 to date that I would interpret again -- I'm not sure
 11 that I'm qualified to interpret fraudulent or
 12 non-fraudulent, but behavior by Mr. Rhodes.
 13 BY MR. KORNFELD:
 14 Q. Again, my question is simple, and if you can
 15 give a yes-or-no answer I can move on.
 16 Have you personally seen any documents other
 17 than exhibit A to the trustee motion that would
 18 indicate to you Mr. Rhodes has engaged in fraudulent
 19 activity?
 20 MR. QURESHI: Objection. Asked and answered.
 21 THE WITNESS: The Main report indicates that
 22 Mr. Rhodes was allocating time between creditor --
 23 excuse me -- debtor inside the credit facility and
 24 outside the credit facility and at the -- prior to
 25 bankruptcy Mr. Rhodes elected to pay the noncreditor
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 2 BY MR. KORNFELD:
 3 Q. Has anybody told you that Mr. Rhodes engaged
 4 in fraudulent activity?
 5 MR. QURESHI: Object to form.
 6 And Richard, in answering the question you
 7 need to be careful not to reveal any privileged
 8 communications you may have had with counsel, with
 9 Akin Gump, with counsel for the first lien steering
 10 committee. If you are at all uncertain as to whether
 11 your answer will potentially reveal a privileged
 12 communication, let's take a break and talk about it.
 13 MR. KORNFELD: I'm not sure whether a
 14 yes-or-no answer to that question, if we can get a
 15 yes-or-no answer to that question would indicate
 16 privileged information.
 17 MR. QURESHI: Question read back, please.
 18 MR. KORNFELD: The question is, "Has anybody
 19 told you that Mr. Rhodes engaged in fraudulent
 20 activity?"
 21 And I'm going to respect the privilege. I'm
 22 not disputing the privilege between a constituent
 23 group in a case and an FA, but I am, I believe,
 24 entitled to a yes or no on that even if the yes or no
 25 concludes conversations with counsel. And if a
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2 that absolutely. Have they specifically used the word
3 "fraud" or not, I don't recall.

4 BY MR. KORNFELD:

5 **Q. Who used the word "thief" with reference to**
6 **Mr. Rhodes?**

7 A. Again, I am referring to the meaning or the
8 implication, not the specific word.

9 **Q. Has anybody in your presence used the word**
10 **"thief" with reference to Mr. Rhodes?**

11 A. So as I have stated, the specific words that
12 individuals used to describe Mr. Rhodes's activities
13 or their interpretation of Mr. Rhodes's activities, I
14 don't recall whether they've used the word "fraud,"
15 "thief," "stealing," "mismanagement." The list I'm
16 sure can go on and on in terms of adjectives that one
17 would describe fraudulent activity. So that's my
18 answer and will continue to be my answer.

19 **Q. As you sit here today, you don't recall a**
20 **single person who used the word "thief" with reference**
21 **to Mr. Rhodes?**

22 MR. QURESHI: Object to form.

23 THE WITNESS: Again, Alan, these stories or
24 these allegations, claims from both -- many of which
25 are past employees, again, people who are in the

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2 he's looked at something that I haven't now, why don't
3 we do this. Why don't we e-mail to Brett a copy of
4 that whatever was on the BlackBerry. She can print it
5 out, make copies for everybody, and then we can all
6 have it in front of us.

7 MR. QURESHI: A wonderful suggestion.

8 MR. KORNFELD: So let's wait two minutes and
9 do that -- why don't we do this: Why don't we proceed
10 with another line of questioning, and then we'll take
11 a break and we'll go back to the engagement letter and
12 go through that again.

13 MR. QURESHI: Perfect.

14 BY MR. KORNFELD:

15 **Q. Mr. Dix, do you recall a single person who**
16 **used the word "thief" with reference to Mr. Rhodes?**

17 MR. QURESHI: Objection.

18 You can answer.

19 THE WITNESS: I do not recall anyone
20 specifically using that word.

21 BY MR. KORNFELD:

22 **Q. Do you recall a single person who used the**
23 **word "fraud" or the word "fraudulent" to describe**
24 **Mr. Rhodes's conduct?**

25 MR. QURESHI: Object to the form.

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2 marketplace, the specific word they used to describe
3 Mr. Rhodes's activities, they take on many different
4 forms.

5 So I don't -- unfortunately, I didn't have a
6 recorder with me or a court recorder to use the exact
7 words that they used. But again, the comments, as
8 it's even reflected in exhibit A, we've heard
9 countless claims and stories to that effect from a
10 variety of people in and out of the organization.

11 MR. QURESHI: Alan, can we take a break?

12 MR. KORNFELD: Yes, we can.

13 (A recess was taken.)

14 MR. QURESHI: Before you start, Alan, now
15 that we're on the record, during the break, Richard
16 had an opportunity to look at his engagement letter.
17 And having looked at the language -- and we didn't
18 have a hard copy, we actually looked at it on a
19 BlackBerry. But he did have an opportunity to look at
20 the relevant provision concerning the emergent
21 bonus --

22 THE WITNESS: Completion bonus.

23 MR. QURESHI: And as a result of looking at
24 it, he needs to clarify his prior testimony.

25 MR. KORNFELD: Before he does that, since
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2 You can answer.

3 THE WITNESS: We've heard lots of stories,
4 Alan, and so my -- I do not recall them using that
5 specific word. But again, we've heard lots of
6 stories, so...

7 BY MR. KORNFELD:

8 **Q. Do you recall a single person who used the**
9 **word "stealing" to describe any acts committed by**
10 **Mr. Rhodes?**

11 MR. QURESHI: Object to form.

12 You can answer.

13 THE WITNESS: Again, the interpretation of
14 the word can have many meanings, but I don't recall
15 specifically the word "stealing" or a conversation
16 specifically with the word "stealing."

17 BY MR. KORNFELD:

18 **Q. Have you witnessed any potentially criminal**
19 **activity, to use the phrase in the trustee's -- the**
20 **trustee motion at paragraph 8, by Mr. Rhodes?**

21 MR. QURESHI: Object to the form, and calls
22 for a legal conclusion.

23 THE WITNESS: We've not been, I've not been
24 privy to shadow Mr. Rhodes in all of his activities,
25 so I do not recall any time seeing Mr. Rhodes create

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 2 a -- what was the word? Did you use the word --
 3 BY MR. KORNFELD:
 4 **Q. Criminal activity.**
 5 A. Criminal activity. I have not had an
 6 opportunity to shadow him.
 7 **Q. Did anybody tell you that Mr. Rhodes has**
 8 **committed a criminal act?**
 9 MR. QURESHI: Object to form.
 10 THE WITNESS: Again, I'm not an attorney, so
 11 interpreting someone's, whether it's criminal activity
 12 or not, I'm not in a position to comment. People have
 13 told me many, many stories about Mr. Rhodes; they take
 14 many forms, they use a variety of words to describe
 15 them. What your interpretation of "criminal" or the
 16 court's or someone else, I'm not in a position to
 17 comment, but I don't recall anyone specifically using
 18 the word "criminal," and unfortunately, I don't recall
 19 every conversation and every word used in those
 20 conversations.
 21 BY MR. KORNFELD:
 22 **Q. To be clear, as you sit here today, did**
 23 **anybody use the word "criminal" to describe any act by**
 24 **Mr. Rhodes?**
 25 MR. QURESHI: Object to form.
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 2 **Q. Are there any other set of acts that to you**
 3 **constitute potentially fraudulent activity by**
 4 **Mr. Rhodes?**
 5 A. If you would like, I can go through and read
 6 all the things that are stated in this exhibit A that
 7 make claims to Mr. Rhodes's activities.
 8 Unfortunately, we've not had the opportunity
 9 to shadow Mr. Rhodes and all his activity. We're here
 10 as a financial advisor. We are not here as forensic
 11 accountants. We are not here to do investigative work
 12 on whether Mr. Rhodes has had criminal activity or
 13 not, taken criminal activity.
 14 So have I heard, have I read, have I heard
 15 countless stories of actions that one might interpret?
 16 Maybe. But the question is very difficult for me to
 17 answer in this context.
 18 So have I heard, read, yes, absolutely.
 19 **Q. What other sets of acts that you have heard**
 20 **of or read about constitute potentially fraudulent**
 21 **activity by Mr. Rhodes?**
 22 MR. QURESHI: Object to form on that one.
 23 Clearly calls for a legal conclusion.
 24 You can answer.
 25 THE WITNESS: I assume you are referring to
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 2 THE WITNESS: I don't recall.
 3 BY MR. KORNFELD:
 4 **Q. Did anybody use the word "criminal" in a**
 5 **conversation with you to describe any act by**
 6 **Mr. Rhodes?**
 7 A. That specific word, I don't recall.
 8 **Q. When I asked you if you had heard of**
 9 **potential fraudulent activity by Mr. Rhodes, you**
 10 **referenced three sets of facts. One was Harmony home**
 11 **building. Do you recall that testimony?**
 12 A. I do.
 13 **Q. One was the rent for John Rhodes' house. Do**
 14 **you recall that testimony?**
 15 A. It was actually the company's house, but yes,
 16 I do.
 17 **Q. The rent for the house that was paid to John**
 18 **Rhodes; right?**
 19 A. Correct.
 20 **Q. So that's the second set of acts.**
 21 **Number 3 set of acts of potentially**
 22 **fraudulent activity was, according to you,**
 23 **mismanagement of accounting processes. Do you recall**
 24 **that testimony?**
 25 A. I do.
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 2 beyond exhibit A and the Main report and --
 3 BY MR. KORNFELD:
 4 **Q. Believe me, we are going to get to exhibit A.**
 5 A. Okay.
 6 **Q. And we're going to at this point, based on**
 7 **your testimony, spend a significant amount of time --**
 8 A. Wonderful.
 9 **Q. -- about exhibit A.**
 10 A. Great.
 11 **Q. But I'm asking, have you or WCP observed,**
 12 **read documents, heard about potentially fraudulent**
 13 **conduct by Mr. Rhodes other than what's in exhibit A**
 14 **and the Main Amundson report?**
 15 MR. QURESHI: Object to form.
 16 THE WITNESS: Sitting here today, Alan, I
 17 don't recall every story that I have been told or
 18 heard about Mr. Rhodes.
 19 BY MR. KORNFELD:
 20 **Q. Other than what's in exhibit A and the Main**
 21 **Amundson report, have you heard any stories that would**
 22 **lead you to believe that Mr. Rhodes has done anything**
 23 **wrong?**
 24 MR. QURESHI: Object to form.
 25 THE WITNESS: Let me sit back and think of
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We have not been able to evaluate the reconciliation between the companies, meaning the noncreditor and creditor companies. So we have not been able to do an in-depth investigation; however, the work, from our knowledge, did take place.

Q. You haven't investigated whether there was a proper reconciliation between the in-credit and out-of-credit companies with respect to that work, have you?

A. We have not, no, sir. And we have not -- the 2008 audit was not completed by the third party auditing firm, Deloitte & Touche. So we have not been able to review the audit for that period -- for the 2008 period as well. So we have no audited financial statements as well for the 2008 period. So there is nothing for us to really -- there has been no other information provided.

Q. So you do not know whether there was a proper reconciliation between the --

A. We do not. I do not.

Q. Let me finish.

A. Okay.

Q. I'll try again.

A. Good.

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Q. I like praise. Okay.

So you do not know whether there was a proper reconciliation between the in-credit and out-of-credit companies with respect to the Pravada grading issue, do you?

A. That is correct.

Q. Since April 1, have the debtors made any cash payments to nondebtor entities that WCP views as being inappropriate?

A. I can't comment on that, because there's one of our accountants on staff actually reviews that. So that's something that I can't comment on. But I'm not aware of -- so I can just finish here, Alan, before you get to the question and ask it to me again. That I'm personally not aware of any payments to any of those entities.

Q. Has the accountant who reviews payments told you that the debtors have made inappropriate cash payments to nondebtor entities since April 1?

A. No, they have not.

Q. Have the debtors made any inappropriate payments whatsoever, to your knowledge, since April 1?

A. Not to my knowledge.

Q. Has your accountant told you that the debtors

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have made inappropriate payments since April 1?

A. Not that I'm aware of.

Q. And you would expect that if the debtors were making inappropriate payments to anybody, the accountant that works for you would have told you that; correct?

A. Based on their limited visibility, I guess, if they knew of it, they would tell me.

Q. Really fast, wouldn't they?

A. You would hope, yes.

Q. In fact, all of us in this room would have heard about any such inappropriate payments if you or anybody else at WCP knew about them; correct?

A. That is correct.

Q. Have you seen anything that would indicate to you that Mr. Schramm has done anything dishonest?

A. Not anything that I recall.

Q. Has your accountant, who has been basically living at Rhodes, told you that Mr. Schramm has done anything dishonest?

MR. QURESHI: Object to the form.

THE WITNESS: Not that I recall.

BY MR. KORNFELD:

Q. Has anybody told you that Mr. Schramm has

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done anything dishonest?

A. Not that I recall.

Q. You reference the Alix report, which is exhibit A to the trustee motion. Let's turn to that.

Sir, my copy of the Alix report is not signed by any AlixPartners who drafted the report. Does your copy have a signature block on it?

MR. QURESHI: That would be the same copy you gave him?

MR. KORNFELD: Yes.

THE WITNESS: No, it does not.

BY MR. KORNFELD:

Q. Do you know which of the AlixPartners were the authors of exhibit A to the trustee motion?

A. I do not.

Q. Have you ever heard anybody mention the name of who the authors of this report that is exhibit A to the trustee motion were?

A. Not that I recall.

MR. QURESHI: Could we go off the record for just 10 seconds?

MR. KORNFELD: Sure.

(Discussion off the record.)

MR. KORNFELD: Let's go on the record.

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